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UNCLAS NASSAU 001834

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STATE FOR WHA/CAR WBENT

E.O. 12958: N/A

TAGS: PHUM PREL CASC KJUS BF

SUBJECT: LANDMARK CIVIL RIGHTS DECISION PROVIDES REMEDY FOR CONSTITUTIONAL ABUSES

1. Summary. American Citizen Tamara Merson sued the Bahamian Government in 1987 for civil rights abuses arising from wrongful imprisonment. In an October 13, 2005 decision, the Privy Council, The Bahamas' highest court, held that a person may seek damages for breach of constitutional rights. Previously, constitutional violations were subject only to declaratory relief, and citizens were hesitant to pursue expensive civil rights cases without the possibility of financial recovery. The Chief Justice called the decision a "remarkable" creation of a "new category of damages." According to human rights attorney Fred Smith, the decision is a "human rights milestone" which "has given teeth to The Bahamas' Constitution." End Summary.

2. In 1987, visiting American citizen Tamara Merson was wrongfully jailed and abused by Bahamian police in Freeport, Grand Bahama. Following trial, the court awarded Ms. Merson both traditional compensatory damages for specific injuries and additional damages for breach of constitutional protections against degrading treatment or punishment, against deprivations of personal liberty and against arbitrary detention. The Government did not contest liability, but successfully challenged the damages award at the Court of Appeal on the grounds that no monetary remedy was available for violation of Constitutional rights. On October 13, the Privy Council disagreed, supporting the right to seek compensation for Government violations of civil rights. "Vindictory damages", said the Council, "vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her live life in The Bahamas free from unjustified executive interference, mistreatment or oppression."

3. Poloff and DCM met with Chief Justice of the Bahamas Sir Burton Hall on October 19, who called the case "remarkable" and acknowledged the creation of an entirely new category of damages for civil rights violations. He said that attorneys in The Bahamas have been hesitant to take up constitutional cases because of their complexity and lack of potential compensation. Few civil rights complainants had the patience and resources of Ms. Merson, who pursued her case without promise of reward for nearly 20 years. Sir Burton cautioned, however, that verdicts against the Bahamian government may not be sufficient to motivate street-level police officers and other low-level government actors to protect constitutional rights.

4. Fred Smith, president of the Grand Bahama Human Rights Association, called the decision a "milestone in civil rights" which gives the constitution "muscle and teeth." "We can not only make the Government talk about rights," he said, "we can give the Government incentive not to abuse them." Similarly, local attorney Elizier Regnier has said that the decision "will allow me to fight for my client's rights in court without putting me, or them, into the poor house." Mr. Smith and Mr. Regnier appear ready to use the Merson decision to address long-standing civil rights concerns in the immigrant Haitian community and elsewhere.

5. Comment: Depending upon the response by the local bar and bench, the decision could be the Bahamian equivalent of the 1964 Civil Rights Act in the U.S. For the first time, the Government has a monetary incentive to avoid civil rights abuses. While the Bahamian government generally respects civil rights, specific issues -- conditions in Fox Hill Prison, civil rights in the Haitian community, conditions at the Migrant Detention Center, beatings by local police -- have lingered for years and may now face legal attack. While the Chief Justice doubted that monetary awards will adequately improve the behavior of low-level government actors, experience in the U.S. says otherwise. The ultimate result of the case is still uncertain, but the decision makes it more likely that the local bar will make civil rights a priority and that Government agencies will be more sensitive to potential vindictory damages awards. End comment.
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